S.B.CRIMINAL LEAVE TO APPEAL NO. 103/2007

(State of Rajasthan Vs. Arjun Lal Meena)

Date of order : 01/08/2007

HON'BLE MR.H.R.PANWAR, J.

Mr. V.R.Mehta, P.P.
Mr. Mahipal Bishnoi on behalf of
Mr. Rakesh Arora for the respondent.

The State of Rajasthan by this criminal leave to appeal under Section 378 (3) and (1) Cr.P.C. seeks to challenge the judgment and order dated 14.2.2007 passed by Additional Chief Judicial Magistrate, Udaipur (for short 'the trial court' hereinafter) in Criminal Case No. 131/2000 whereby the trial court acquitted the sole respondent for the offences under Sections 18 © r/w 27 (B), Sec. 18 (A) r/w Sec. 28 and Sec. 18 (A) (6) r/w 27 (D) of Drugs and Cosmetic Act, 1940.

I have heard learned counsel for the parties. Perused the judgment and order impugned and the record of the trial court.

The two material witnesses who were drug inspectors and carried search and seizure have not been produced by the prosecution namely complainant Lalit Ajariya, Drug Inspector,

Udaipur and Hariom Mehta, Drug Inspector, Rajsamand. The other witness produced by the prosecution is PW-4 Satyanarayan who himself admitted to be inimical to that of the accused respondent. PW-5 Shankerlal the other witness categorically stated that he and PW-4 Satyanarayan were sitting outside the house of the accused respondent as search and seizure was made by drug inspectors Lalit Ajariya and Hariom Mehta and they were the only persons who went inside the house of accused respondent. He also stated that both the drug inspectors taken the accused respondent to the Hospital but they did not bring any article with them.

Thus, from the statement of PW-5 Shankerlal it is clear that neither PW-5 Shankerlal nor PW-4 Satyanarayan witnessed the occurrence, no search and seizure was made in their presence, they were only the persons sitting outside the house of the accused respondent. The trial court noticing the serious infirmities in the prosecution case to the extent that drug inspector complainant Lalit Ajariya as also other inspector Hariom Mehta both were not produced and thus the search and seizure has not been established beyond reasonable doubt and therefore, extended the benefit of doubt and acquitted the accused respondent. In my view, the conclusion arrived at by the trial court cannot be said to be erroneous in any manner and

it is not at all a fit case to grant leave to appeal to this Court.

The application seeking leave to appeal to this Court is therefore, dismissed.

(H.R.PANWAR),J.

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